

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY PERNELL GAMMAGE,

Defendant-Appellant.

UNPUBLISHED

September 14, 2004

No. 249196

Wayne Circuit Court

LC No. 03-000661-01

Before: Schuette, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction, following a bench trial, of unarmed robbery, MCL 750.530. The trial court, applying a third-offense habitual offender enhancement under MCL 769.11, sentenced him to thirty-eight months to fifteen years in prison. We affirm defendant's conviction and sentence, but remand this case for a determination of any applicable sentence credit.

I. Facts

The trial occurred on February 24, 2003. Joyce Howard testified as follows: On December 19, 2002, around 10:00 p.m., she was returning to her house on Beland Street in Detroit after a shopping trip when she saw a "burgundy, reddish color car," with its flashers on, sitting on the street corner north of her house. The driver "was a brown-skinned guy." She proceeded to her house, and as she was about to unlock her door, a black male holding something in his hand walked toward her and said, "Give me your purse." The man wore a hat and a "puffy" jacket. Howard feared that the object being held by the man was a vial containing some type of pepper spray. He pointed it at her face. Howard began screaming, and the man continued to demand her purse. He grabbed the purse strap until it broke, pushed Howard to the ground, and ran away from the scene with the purse, a "Coach" brand.

Howard stated that the man ran "southbound past [her] house." She looked in that direction and saw, parked on the street, the burgundy car that she had seen earlier. A man was trying to start the car, and she took note of the license plate number, VZT 579. She assumed the man trying to start the car was her assailant, but she did not actually observe her assailant entering the burgundy car. She then approached the car and recognized the person in the driver's seat as her assailant, because of "the way he looked and the clothing" – the hat and the "puffy" jacket. She could not identify his face, however.

Eric Decker, a Detroit police sergeant, testified that he came to Howard's house on the day in question, ran a computer search of the VZT 579 license plate number, and found that the car was registered to defendant. He proceeded to the address listed in connection with the car's registration, 13485 Hazelridge Street, and then heard a radio report of the same car having been carjacked. Decker therefore proceeded to the address given in connection with the carjacking complaint, 472 Marlborough Street. He found no such address. He contacted the dispatcher to determine from where the 911 call about the carjacking had originated; it had originated from 13485 Hazelridge Street. Decker and two colleagues drove to 13485 Hazelridge Street. Outside the residence, "at the alley," Decker found a black Coach purse with a broken strap; the purse contained Howard's identification card.

Anne Mott, a Detroit police officer, testified that she came to the 13485 Hazelridge Street location on December 23, 2002, in order to arrest defendant for traffic warrants. She and her colleague were given consent to search the residence, and they found defendant in a bedroom, "[h]iding in between the bed and the wall in a blanket." She arrested defendant and also confiscated a 12-gauge shotgun that was lying underneath him.

Julius Moses, an investigator with the Detroit Police Department, testified that he interviewed defendant on December 23, 2002. Moses testified that defendant (1) admitted to stealing Howard's purse but denied having a gun or pepper spray at the time and (2) admitted to calling 911 to report a carjacking, because "[t]he lady ran behind me and got my license plate."

On cross-examination, the defense attorney elicited from Moses that Howard had chosen someone other than defendant from a photographic lineup, but Moses testified that Howard had not been sure about her choice. Moses denied, in contrast to defendant's later testimony, that defendant had complained to him about being injured by the police during his arrest.

Defendant testified as follows: His friend, Darren Rogers, borrowed his car on the evening in question and had it during the time of the reported robbery. After borrowing the car, Rogers met up with defendant sometime after 10:00 p.m., but Rogers did not have the car or the car's keys with him at the time. Rogers "pulled a weapon on" defendant, and defendant then called 911 to report the car as stolen.¹ Rogers threatened to hurt defendant's family if defendant "spoke about what had happened the night of the 19th."

Defendant testified that he admitted to the robbery because he feared for his family. He testified that he told Moses several times that he did not rob Howard, and he further stated that he walks with a limp (Howard testified that she did not notice anything unusual about her assailant's gait).

Although defendant had been charged with armed robbery, the trial court convicted defendant of the lesser-included offense of unarmed robbery.

¹ Defendant did not initially explain why he called to report a carjacking. He later claimed that he was forced to do so by Rogers, but he did not clearly explain how or why Rogers forced him to make the call.

II. Motion to Suppress

Defendant first argues that the trial court should have granted his pretrial motion to suppress his custodial confession because it was the product of an illegal arrest. He contends that “just because he had outstanding traffic tickets does not allow the police to use an arrest warrant for these tickets as a way to circumvent the law against investigatory arrests.” Defendant further contends that suppression was warranted because the police were not given consent to search the Hazelridge Street address on the date of his arrest. He states that “the search was illegal because the officers did not even attempt to determine whether [Eddie Porter, who answered the door] had authority to give consent.”

The hearing on defendant’s motion to suppress occurred on February 18, 2003. Officer Mott testified that, when she and her colleague arrived at the Hazelridge house on the day in question, an older male, Eddie Porter, came to the door. According to Mott, “[h]e stated at that time that [defendant was not present] and that we could look in the location for him.” Mott did not ask Porter if he lived there or how he was related to the other individuals in the house. Mott stated that she arrested defendant for a misdemeanor involving unpaid traffic tickets; he owed \$224.

Jamal Hamood, the Detroit police officer who accompanied Mott at the time of defendant’s arrest, corroborated Mott’s testimony that Porter consented to their search of the Hazelridge house. Hamood admitted that he did not ask Porter if Porter lived in the house.

Investigator Moses testified that, after the robbery, he discovered that defendant had outstanding traffic warrants. He directed officers to arrest defendant for these warrants but not for armed robbery because “I didn’t have enough information at that time to get an arrest warrant for the armed robbery.”

Tehodora Howell, defendant’s sister, testified that defendant and his girlfriend, Bernette Anderson, lived at 13485 Hazelridge in December 2002. She did not know of anyone else living at the location. She was visiting the house at the time of defendant’s arrest. She told defendant’s father, Eddie Porter, to open the door when the police arrived because she was afraid they were going to break the door. Howell stated that when Porter first opened the door, the police “just came in,” without asking permission first. She stated that Porter did not give the police permission to search the house.

The court denied defendant’s motion to suppress, stating in part, that “the officers did in fact rely reasonably on consent given to search the home” and that Howell’s testimony was not credible. The court noted that “[t]here is no evidence that any of the persons present indicated that Porter didn’t have the authority or wouldn’t have the authority” to grant access to the home. With regard to the “investigatory arrest” issue, the court stated that the police properly arrested defendant under the outstanding traffic warrants and that “to hold otherwise would be to grant a defendant immunity on all pending minor charges once he is under suspicion for a more serious charge.”

This Court reviews a trial court’s factual findings with regard to a ruling on a motion to suppress evidence for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001).

We review the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

We find no basis for reversal with respect to the “erroneous search” argument or with respect to the “investigatory arrest” argument.

In determining whether police officers had consent to search a home, this Court views the totality of the circumstances. *People v Gary*, 150 Mich App 446, 450; 387 NW2d 877 (1986). Consent may be given not only by the defendant himself but also “by a third party who had equal possession or control of the premises.” *Id.* If the police, in good faith, believe that the person granting them consent to search a home has the proper authority to grant it, then no constitutional violation occurs with respect to the consent. *Id.* at 450-451. The police may not proceed “without making some inquiry into the actual state of authority when they are faced with a situation which would cause a reasonable person to question the consenting party’s power or control over the premises . . .” *Id.* at 451 (citations and internal quotations omitted). Here, we conclude that the officers were not faced with such a situation. Indeed, nothing, considering the totality of the circumstances in this case, served to warn the officers that Porter might not have the authority to consent to a search of the home. There is no indication that Porter looked out-of-place at the home or that anyone made a statement questioning his authority. The officers testified that Porter allowed them to search the home, and the trial court, as the finder of fact, explicitly found the officers’ testimony to be credible. No error occurred.

Defendant’s “investigatory arrest” argument is similarly without merit. First, there is no dispute that the police actually had a valid basis – the outstanding traffic warrants – for making an arrest and that they *in fact made the arrest* based on the outstanding warrants. Cf. *People v Martin*, 94 Mich App 649, 653; 290 NW2d 48 (1980) (reversal warranted because the defendant was improperly arrested for “investigation of murder,” even though an arrest on other valid grounds would have been proper). Second, defendant cites no authority for his argument that the police, once they made the valid arrest, were prohibited from asking him about the robbery. Accordingly, the argument has been waived for purposes of appeal. See *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001). Finally, this Court has held that, regardless of the subjective intentions of the police, an arrest is not pretextual or unconstitutional if the police had probable cause to believe that the defendant committed a crime and if the police were authorized by law to make a custodial arrest. See *People v Haney*, 192 Mich App 207, 210-211; 480 NW2d 322 (1991). See also, generally, *U.S. v. Ferguson*, 8 F3d 385, 392 (CA 6, 1993) (“traffic stops based on probable cause, even if other motivations existed, are not illegal”). Here, the police did indeed have the lawful authority to arrest defendant, and reversal is unwarranted.

III. Sufficiency of the Evidence

Defendant next argues that the prosecutor presented insufficient evidence to sustain his conviction. Specifically, defendant argues that the prosecutor failed to prove defendant’s identity as the perpetrator of the robbery.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in the light most favorable to the prosecutor and determine whether a rational trier of fact could have determined that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11

(1985); *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990). The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *Vaughn, supra* at 379-380. A trial court's findings of fact are reviewed for clear error. MCR 2.613(C).

Defendant's argument is without merit. Indeed, his identity as the robbery perpetrator was established by the evidence that (1) Howard saw the robbery perpetrator sitting in a car with the license number VZT 579, (2) the car with license number VZT 579 was registered to defendant, (3) the police found Howard's purse outside of defendant's home, (4) a false carjacking report involving the car in question was made from defendant's address, and (5) defendant admitted to stealing Howard's purse and calling 911 to report a carjacking. While the trial court also heard evidence weighing in defendant's favor, it nonetheless had sufficient evidence on which to base its conviction of defendant. See MCR 2.613(C) ("regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses").

IV. Jail Credit

Defendant lastly argues that the trial court failed to credit him for time he served in jail while awaiting trial. Defendant contends that he was not required to serve any additional time with respect to an offense for which he was on parole at the time of the instant offense. Accordingly, he contends that any time he spent in jail awaiting trial for the instant case should be credited against his current sentence, and he requests a remand for a correction of his sentence. Although the record is unclear regarding whether defendant actually is due a sentence credit, the prosecutor concedes that "this case should be remanded for a determination whether defendant is due sentence credit on this case." In light of this concession, we remand for such a determination.

Defendant's conviction and sentence are affirmed, but this case is remanded for a determination of sentence credit. We do not retain jurisdiction.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Patrick M. Meter